

Amendment to the Constitution of the State of New York

Judicial Department,

Section One.

The Judicial power of the State shall be vested in the Senate, sitting as a Court of impeachment, in a Supreme Court, Superior Courts, Criminal Courts, Probate Courts, Justices of the Peace, and such inferior Courts as the Legislature may establish in any incorporated City or town;

Section Two.

The Supreme Court shall consist of a Chief Justice, and Six Associate Justices. The Court may sit in Departments and in Bank and shall always be open for the transaction of business. There shall be two departments, denominated respectively, Department One, and Department Two. The Chief Justice shall assign three of the Associate Justices to Each department, and such Assignment may be changed by him from time to time. The Associate Justices shall be competent to sit in Either department, and may interchange with Each other by agreement among themselves or as ordered by the Chief Justice.

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Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the Court in bank. The presence of two justices shall be necessary to transact any business in either of the departments, except such as may be done at Chambers, and the concurrence of two justices shall be necessary to pronounce a judgment. The Chief Justice shall apportion the business to the departments, and may in his discretion order any cause pending before the Court to be heard and decided by the Court in bank. The order may be made before or after judgment pronounced by a department, but where a cause has been allotted to one of the departments and a judgment pronounced therein, the order must be made within sixty days after such judgment and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment. If the order be not made within the time above limited the judgment.

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shall be final, no judgment by a department shall become final until the expiration of the period of sixty days aforesaid unless approved by the Chief Justice in writing with the concurrence of two Associate Justices. The Chief Justice may convene the Court in bank at any time, and shall be the Presiding Justice of the Court when so convened. The concurrence of four justices present at the argument shall be necessary to pronounce a judgment ^{in bank}, but if four justices so present do not concur in a judgment, then all the justices qualified to sit in the cause shall hear the argument, and judgment may be pronounced by a majority thereof, and if they are equally divided in opinion the judgment or order appealed from shall stand affirmed. In the determination of causes, all decisions of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated. The Chief Justice may sit in either department, and shall preside when so sitting, but the justices as =

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signed to Each department shall select one of their number as presiding Justice. All sessions of the Court whether in bank or in departments shall be held at the Capital of the State. In case of the absence of the Chief Justice from the place at which the Court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and Exercise the powers of the Chief Justice during such absence or inability to act.

Section Three.

The Chief Justice shall be appointed by the Governor with the advice and consent of the Senate, and shall hold office during good behavior. The Associate Justices shall be elected by the qualified electors of the State at large, and the term of office shall be twelve years, from and after the first Monday of January next succeeding their election; provided that the six justices elected at the first election shall at their first meeting so classify themselves

5 by lot, that two of them shall go out of office at the end of four years, two of them at the end of eight years and two of them at the end of twelve years, and an Entry of such classification shall be made in the minutes of the Court in bank signed by them and a duplicate thereof shall be filed in the office of the Secretary of State.

If a vacancy occur in the office of Associate Justice the Governor shall appoint a person to hold the office until the Election and qualification of a justice to fill the vacancy which Election shall take place at the next succeeding general Election, and the Justice so elected shall hold the office for the remainder of the unexpired term.

The first Election of the Associate Justices shall be at the first general Election after the adoption and ratification of this Constitution.

Section Four:

The Salary of the Chief Justice shall be Ten Thousand Dollars per annum, and the Salary of Each Associate Justice shall be Eight

Thousand Dollars, per annum.

Section Five:

The Supreme Court shall have appellate jurisdiction in all cases in Equity; also in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also in all cases arising in the Probate Courts; and also in all criminal cases amounting to felony, on questions of law alone. The Court shall also have power to issue writs of Mandamus, Certiorari, Prohibition and Habeas Corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have power to issue writs of Habeas Corpus to any part of the State, upon petition on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or

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before any Superior Court in the State, or before any judge thereof: Any justice of the Supreme Court may allow alternative writs and orders to show cause with or without a temporary restraining order. In cases of which the Court has original jurisdiction all issues of law and fact shall be determined by the Court in bank or one of the departments in such manner as may be provided by law or the rules of the Court:

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Sec 6. There shall be a Superior Court in each County of the State. In the County of San Francisco, there shall also be a Criminal Court to be known as the "Criminal Court," which shall have jurisdiction in all Criminal cases amounting to felony, and in cases of misdemeanor not otherwise provided for. And there shall also be in the County of San Francisco, a Probate Court which shall have jurisdiction of all matters of Probate, Guardianship, Divorce, and Annulment of Marriage.

Sec 7. The Judges of the Superior Court in each County, shall be elected by the qualified electors thereof. The Judges of the Criminal Court and of the Probate Court, in the County of San Francisco, shall be elected by the qualified electors of said County. In the County of San Francisco, there shall be seven Judges of the Superior

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Court, any one or more of whom may hold Court. There may be as many sessions of said Court, at the same time, as there are judges thereof. The said judges shall choose from their own number, a Presiding Judge who may be removed at their pleasure. He shall distribute the business of the Court among the judges thereof, and prescribe the order of business. In the County of San Francisco, there shall be three judges of the Criminal Court, any one or more of whom may hold Court. There may be as many sessions of said Court at the same time as there are judges thereof. The said judges shall choose from their own number, a Presiding Judge, who may be removed at their pleasure. He shall distribute the business of the Court, amongst the Judges

thereof, and prescribe the order of business. In the County of San Francisco, there shall be two Judges of the Probate Court any one or more of whom may hold Court. There may be as many sessions of said Probate Court, at the same time as there are Judges thereof. They shall distribute and apportion the business of the Court between themselves as they may agree upon.

The judgments, orders and proceedings of any session of the Superior Court, of the Criminal Court, and Probate Court, held by any one or more of the Judges of said Courts respectively, shall be equally effectual as if all the Judges of said respective Courts presided at such session.

(Here provide for the number of Judges for the Superior Court

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in each of the other Counties. }

The term of office of judges of the Superior Courts, shall be six years, from and after the first Monday of January next succeeding their election; and the terms of office of the judges of the Criminal Court and of the Probate Court of the County of San Francisco, shall be six years from and after the first Monday of January next succeeding their election; provided, that the seven judges of the Superior Court, elected in the County of San Francisco, at the first election held under this Constitution, shall at their first meeting so classify themselves by lot, that two of them shall go out of office at the end of two years, and two of them shall go out of office at the end of four years, and three of them shall go out of office at the end of six

years, and an entry of such classification, shall be made in the minutes of the Court, signed by them, and a duplicate thereof, filed in the Office of the Secretary of State; and provided further, that the judges of the Criminal Court elected in the County of San Francisco at the first election held under this Constitution, shall at their first meeting so classify themselves by lot, that one of them shall go out of office at the end of two years, and one of them shall go out of office at the end of four years, and one of them shall go out of office at the end of six years, and an entry of such classification shall be made in the minutes of the Court, signed by them, and a duplicate thereof filed in the office of the Secretary of State; and provided further, that the judges of the Probate Court, elected in the County of San Francisco, at the first election held under this Constitution

shall, ^{at their first meeting} so classify themselves by lot, that one of them shall go out of office at the end of four years, and one of them shall go out of office at the end of six years, and an entry of such classification, shall be made in the minutes of the court, signed by them, and a duplicate thereof filed in the office of the Secretary of State.

The first election of judges of the Superior Courts, and for judges of the Criminal Court and for judges of the Probate Court of the County of San Francisco, shall take place at the first general election held after the adoption and ratification of this constitution.

If a vacancy occur in the office of judge of a Superior Court, or of the Criminal Court, or of the Probate Court of the County of San Francisco, the Governor shall appoint a person to hold the office until the election and

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qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected, shall hold office for the remainder of the unexpired term.

Sec 8. The salary of a judge of the Superior Court in the County of San Francisco, and of a judge of the Criminal Court and Probate Court of said County, shall be the same as that of an Associate Justice of the Supreme Court of the State.

{ Here provide for salaries in other Counties. }

Sec. 9. A judge of any Superior Court, may hold a Superior Court in any County, at the request of a judge of the Superior Court thereof, and upon the request of the Governor, it shall be his duty so to do.

Sec. 10. The Legislature of the State, may at any time, two thirds of the members of the Senate, and two thirds of the members of the Assembly voting therefor, increase or diminish the number of judges of the Superior Court in any County in the State, or of the Criminal Court, or of the Probate Court of the County of San Francisco, provided that no such reduction shall affect any judge who has been elected.

Sec 11.

The Superior Courts shall have original jurisdiction in all cases in equity, and in all cases at law which involves the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest, amounts to \$500, and in all criminal cases amounting to felony and cases of misdemeanor not otherwise provided for; also, in actions of forcible entry and detainer, of proceedings in insolvency of actions to prevent or abate a nuisance, and all such special cases and proceedings as are not otherwise provided for; also, of all matters of probate. And said Courts shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in Justices' and other inferior Courts in their respective counties as may be prescribed by law. Said Courts shall be always open (legal holidays and non-judicial days excepted) and their original jurisdiction shall extend to all parts of the State. Said Courts and their Judges shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto and habeas corpus on petition by or on behalf of any person in actual custody, in their respective counties.

Superior

provided, that in the County of San Francisco, the Superior Court shall not have any jurisdiction given by this Constitution to the Criminal Court or the Probate Court.

Sec. 12. Justices of the Supreme Court, and Judges of the Superior Courts, and

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of the Criminal Court, and the Probate Court of the County of San Francisco, may be removed by concurrent resolution of both houses of the Legislature if two thirds of all the members of the Assembly, and a majority of all the members elected to the Senate, concur therein. All other Judicial Officers except Justices of the Peace, may be removed by the Senate on the recommendation of the Governor, but no removal shall be made by virtue of this section unless the cause thereof be entered on the Journal, or unless the party complained of have been served with a copy of the Complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the Journal.

Am to 455

Judicial
Department

Oct. 31. 1878

Read. ordered
printed out of order
& referred to Com
on Judiciary & Judicial
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Thorton
as see

Nov 13. 1878

Reported back with
Substitute Am to 503

Thorton
as see

Wilson
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